

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Improving Public Safety Communications)	WT Docket No. 02-55
in the 800 MHz Band)	DA 02-2202
and)	DA 02-2306
Consolidating the 900 MHz Industrial/Land)	
Transportation and Business Pool Channels)	

To: The Commission

**COMMENTS OF CREATIVE AIRTIME SERVICES, LLC,
FISHER WIRELESS SERVICES, INC., FLEETTALK PARTNERS, LTD.,
INDUSTRIAL WIRELESS TECHNOLOGIES, INC. AND RADIO ONE, INC.**

Creative Airtime Services, LLC, Fisher Wireless Services, Inc., FleetTalk Partners, Ltd., Industrial Wireless Technologies, Inc. and Radio One, Inc. (collectively “Joint Commenters”) respectfully submit the following Comments in response to Public Notices released by the Federal Communications Commission (“FCC” or “Commission”) on September 6, 2002¹ and September 17, 2002,² inviting comment on the so-called “Consensus Plan” as well as other plans or proposals recommended in the Reply Comment stage of the above-entitled proceeding.³ For the reasons detailed below, the Joint Commenters urge the Commission to adopt a regulatory framework for the 800 MHz band that addresses the three critical issues identified by the FCC in the Notice, but that

¹*Public Notice*, Wireless Telecommunications Bureau Seeks Comment on “Consensus Plan” Filed in the 800 MHz Public Safety Interference Proceeding, DA 02-2202 (rel. September 6, 2002).

²*Public Notice*, Wireless Telecommunications Bureau Clarifies Scope of Comments Sought in 800 MHz Public Safety Proceeding, DA 02-2306 (rel. September 17, 2002).

³*Notice of Proposed Rule Making*, WT Docket No. 02-55, FCC 02-81 (rel. March 15 2002) (“NPR” or “Notice”).

also minimizes the likelihood of protracted regulatory and judicial appeals that could undermine the utility of this and other Private Land Mobile Radio (“PLMR”) spectrum for an extended period.

I. INTRODUCTION

Each of the Joint Commenters operates 800 MHz and/or 900 MHz commercial systems authorized under Part 90 of the Commission’s Rules,⁴ which operations will be impacted directly by the FCC’s decision in the instant proceeding. Moreover, the Joint Commenters are two-way radio dealers providing radio equipment sales, as well as system design, integration, construction and maintenance, to a number of large and small customers, including those currently operating on the 800 MHz spectrum at issue herein.

The companies appreciate the very complex issues the FCC must resolve in the instant proceeding. They acknowledge that there is no simple, painless or quick solution to the public safety/”cellularized” Commercial Mobile Radio Service (“CMRS”) interference problem⁵ in the 800 MHz band, as evidenced by the number and diversity of comments filed to date. Nonetheless, the Joint Commenters urge the FCC to make a determination and proceed toward its implementation promptly as regulatory stasis can be fatal to business activity.

Each of these companies has substantial experience with the highly negative business effect of FCC spectrum “freezes.” For example, the Commission’s multi-year freeze of 800 MHz commercial licensing activity while the agency implemented an overlay geographic license auction scheme on top of site-specific incumbent authorizations created an untenable situation. Not only

⁴47 C.F.R. ' 90.1 *et seq.*

⁵The NPR defines “cellular-like” or “cellularized” systems as those employing multiple low-power base stations, automated handoff and frequency reuse and, further, as those consisting of a large number of base stations, each with a relatively low antenna that limits coverage to a small area around the base station. NPR at && 11, 12.

were incumbent licensees denied their natural growth opportunities for an extended period, but several manufacturers abandoned a marketplace that was precluded from expanding operations.

A lengthy period of regulatory uncertainty as a result of the instant proceeding would have the same impact. Most plans proposed in response to the Notice affect not only the 800 MHz band, but 900 MHz PLMR and 700 MHz guard band spectrum as well. Until there is some reasonable degree of finality to whatever decision the FCC reaches, incumbents and prospective licensees will be suspended in regulatory limbo - uncertain whether to expand or contract operations, to buy or sell systems, to construct or surrender licenses.

Telecommunications providers, and their customers, are experiencing the most tumultuous economic climate in half a century. The Joint Commenters urge the Commission to consider the impact of its decision on this already fragile marketplace and to select an approach that will promote the regulatory certainty needed to support sustained industry growth.

II. THE LIKELIHOOD OF ACHIEVING REGULATORY CERTAINTY SHOULD BE A COMPELLING FACTOR IN THE FCC'S EVALUATION OF THE OPTIMAL RESOLUTION OF THIS MATTER.

In the NPR, the Commission identified three issues it deemed critical in this proceeding: 1) interference elimination; 2) minimum disruption to existing services; and 3) provision of sufficient spectrum for public safety.⁶ The Joint Commenters agree that these matters are essential to appropriate resolution of the problem. However, the FCC also has recognized the vital importance of prompt resolution of the proceeding⁷ since a delay in resolving ongoing interference is unacceptable in any instance, but most particularly when public safety communications are involved.

⁶NPR at & 26.

⁷Id. at & 3.

The Commission's task is daunting. The number and diversity of parties and positions in this proceeding are substantial, even for an FCC rule making proceeding involving the potential reallocation of spectrum. Although the interference problem under consideration impacts only 800 MHz licensees, the FCC's solution could have a residual effect on parties as diverse as entities with 900 MHz commercial and non-commercial interests, guard band managers and prospective CMRS auction applicants in the 700 MHz band, mobile satellite entities, particularly those with terrestrial service aspirations, and companies pursuing spectrum options for the deployment of 3G and perhaps even 4G systems.

It is likely that no Commission decision on this matter could accommodate fully all of these disparate constituencies, nor is it necessary that the FCC do so as long as it is satisfied that the public interest is served. However, the Commission should be mindful of the degrees of complexity associated with certain elements of the plans before it. A more perfect solution which is delayed because of protracted litigation may be inferior to one that can begin to alleviate the interference being experienced by public safety on a more accelerated schedule.

The recommended approaches to the 800 MHz public safety/CMRS interference issue can be grouped generally into one of three broad categories. One group favors moving all 800 MHz public safety systems to 700 MHz, reallocating the 30 MHz of CMRS spectrum in that band for public safety use, and leaving the remainder of the 800 MHz band as is.⁸ To date, the public safety community has evidenced no support for that solution. Others claim that a combination of increased flexibility within the 800 MHz band to permit voluntary channel swaps, coupled with original FCC

⁸See, e.g., Comments and Reply Comments filed jointly by Cingular Wireless LLC and ALLTEL Communications, Inc., the joint filing of ALLTEL Communications, Inc., AT&T Wireless Services, Inc., Cingular Wireless LLC, Coupe Communications, Inc., First Cellular, Nokia Inc., Southern LINC, and United States Cellular Corporation, as well as those filed individually by Southern LINC, the Cellular Telecommunications & Internet Association, and Motient Communications, Inc.

enforcement of more stringent technical rules, would be an adequate response to the interference problem.⁹ Again, this proposed solution has not been endorsed generally by public safety users or their representatives.

The third approach recommends a realignment of the 800 MHz band to provide separation between public safety and cellularized CMRS systems and to eliminate interleaving of cellularized and non-public safety systems in the band.¹⁰ While proponents sometimes differ as to where they would draw the line of demarcation between the two types of operations as well as the role other bands might play in a longer-term public safety spectrum strategy, at their core these plans focus on 800 MHz rebanding as a viable interference-resolution mechanism.

Key public safety organizations such as the Association of Public-Safety Communications Officials-International, Inc. (“APCO”), the International Association of Chiefs of Police (“IACP”), International Municipal Signal Association (“IMSA”), the Major Cities Chiefs Association (“MCC”), the Major County Sheriffs’ Association (“MCSA”) and the National Sheriffs’ Association (“NSA”), as well as Nextel Communications, Inc. (“Nextel”), by far the largest incumbent and major cellularized CMRS operator in the band, have endorsed an 800 MHz rebanding solution through their support of the Consensus Plan and in their individual filings. However, the Plan’s reliance on a non-auctioned allocation above 1 GHz to replace the combination of 700 MHz, 800 MHz and 900 MHz spectrum Nextel would surrender under that proposal increases the Plan’s vulnerability to judicial challenge with the resultant business uncertainty. That aspect of the plan has drawn heated opposition from numerous parties and is unlikely to be affirmed without protracted litigation.¹¹

⁹See, e.g., Comments and Reply Comments of United Telecom Council.

¹⁰See, e.g., the Consensus Plan, Reply Comments of American Mobile Telecommunications Association, Inc. and Motorola, Inc.

¹¹See n. 8 *supra*.

Thus, while the Joint Commenters recognize the benefits of the Consensus Plan, and credit those who have worked so diligently to craft that broad compromise, they recommend that careful review be given to the rebanding approach outlined in Motorola's Reply Comments which does not require the reallocation of any spectrum above 1 GHz.

The very fact that Motorola has crafted an alternative rebanding proposal is significant. The company is an equipment supplier to, and in many respects a partner with, all industry segments that have participated in this proceeding. It has an in-depth understanding of the technical and operational issues under consideration and presumably has conducted an internal assessment of solutions that could be accepted by these competing constituencies. Because Motorola traditionally has had a unique role in the wireless industry, its recommendations on a matter of such significance must be given serious consideration.

Like the Consensus Plan, Motorola's proposal would bifurcate the 800 MHz band into a cellularized and non-cellularized portion and would shift public safety operations as far as possible away from the cellularized segment. It differs in that the amount of each band segment would vary on a market-by-market basis depending on the current use of the spectrum in that area. Rather than providing additional 800 MHz capacity for public safety as is possible under the Consensus Plan, Motorola proposes that existing users in the band remain whole in their spectrum holdings. Instead it recommends that future public safety requirements be accommodated on the 700 MHz spectrum currently designated for broadband CMRS service which would be reallocated for state and local public safety use and Federal Government, including related DOD, operations.¹²

In this respect, Motorola's recommended approach, like every other substantive proposal before the FCC, would require coordinated action by various parts of the Federal Government, not

¹²Motorola Reply Comments at p. 7.

just the FCC. The reallocation of 700 MHz CMRS spectrum to public safety would require Congressional approval since that spectrum has been earmarked by Congress for auction. However, Congress already has approved a postponement of that auction scheduled for earlier this year, noting the role this spectrum might play in alleviating the public safety/CMRS problem.¹³ Moreover, Congress and the entire Federal Government repeatedly have emphasized the vital importance of reliable, interoperable public safety communications and are likely to endorse the reallocation of this spectrum for that purpose.¹⁴

Equally important, it is unlikely that the CMRS community that otherwise might have intended to bid for this spectrum at auction would oppose its reallocation for public safety use. Constituent entities already have recommended the reallocation of this spectrum for precisely this purpose in this proceeding.¹⁵ Moreover, the broadband CMRS industry requested and broadly supported the FCC's postponement of the 700 MHz CMRS auction earlier this year.¹⁶ It appears that community may have determined that this spectrum is less suited than other potential allocations, including some identified in this proceeding as possible replacement spectrum for Nextel, for the 3G and more advanced systems they intend to deploy. Thus, the 700 MHz

¹³Pub. L. No. 107-195, 116 Stat. 715, ' 2(4) (2002).

¹⁴*See, e.g.,* Homeland Security Act of 2002, 107th Cong., ' 201(4) (2002). As noted by Motorola, this spectrum is uniquely well-suited for this purpose as the FCC already has allocated the adjacent 24 MHz in the 700 MHz band for public safety use. *See In the Matter of Reallocation of Television Channels 60-69, the 746-806 MHz Band, ET Docket No. 97-157, Report and Order*, 12 FCC Rcd. 22953 (1998).

¹⁵*See n. 8 supra.*

¹⁶*See, e.g.,* April 3, 2002 letter from Thomas E. Wheeler, President/CEO, Cellular Telecommunications & Internet Association to Michael K. Powell, Chairman, FCC requesting that the FCC postpone indefinitely the auction of licenses in the upper and lower 700 MHz bands (Auction Nos. 31 and 44).

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Dated: September 23, 2002